



LINCOLN POLICE DEPARTMENT GENERAL ORDERS

NUMBER: 1630
TOPIC: CHILD CUSTODY DISPUTES
ISSUED BY: TERESA EWINS, CHIEF OF POLICE
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SUPERSEDES: O2404, 1995
REFERENCE: N.R.S. 28-316

I. POLICY

The Lincoln Police Department considers its primary obligation in any child custody dispute to ensure the welfare of the child. The department also acknowledges a responsibility to enforce the State Statutes pertaining to violation of child custody.

II. PROCEDURE

A. General Guidelines

1. Custody of children resides with the parents or legal guardian, unless custody is granted to some other person by the courts.
2. It is a crime to take or entice a child from the parent with legal custody, guardian, or another lawful custodian. Allegations of custody violations must be thoroughly investigated.
3. In any child custody dispute, the assigned officer will determine if the welfare of the child is jeopardized. If the officer discovers reasonable grounds to believe that the child is seriously endangered in their surroundings, or will be so endangered in the immediate future, and immediate removal appears to be necessary for the protection of the child, the officer will take the child into temporary custody. Child Protective Services will be contacted for placement of the child pending further proceedings.

B. Custody Disputes with No Court Order

1. The natural or adoptive parents of a child have equal custody rights when no court order to the contrary exists.
2. In such cases, officers have no authority to act other than to preserve the peace and ensure the welfare of the child. Officers must not intervene on behalf of either parent.
3. Officers may, however, mediate impartially and refer disputants to their attorneys.

C. Custody Disputes with Nebraska Court Order

1. Officers investigating such matters should read any available court orders and should attempt to verify both the authenticity and currency of such documents. This can be done by checking with the issuing court, or by interviewing knowledgeable persons, such as relatives, attorneys involved in the litigation, etc.
2. If officers can establish who has lawful custody in this way, then they should advise the person who has the children of the existence and contents of the court's order and attempt to persuade the person to release the child to the lawful custodian. If this is impractical or unsuccessful, the person holding the child should be warned that they may be committing a criminal offense, Violation of Child Custody.
3. Reports of alleged Violation of Child Custody should be referred to the County Attorney's Office for consideration of criminal charges. If circumstances exist which require action before the reports can be prepared and reviewed by the County Attorney's Office, the officer should confer with the legal advisor or a deputy county attorney concerning the case if possible.

4. One of the elements of Violation of Child Custody is taking or enticing the child away from the person having lawful custody. When there is no taking or enticing (e.g. where a parent refuses to return a child after visitation, but did not take or entice the child away originally) officers should not make an arrest.

D. Custody Disputes Involving Court Orders from Other States

1. Officers involved in such cases should confer with the department legal advisor or County Attorney's Office to determine the appropriate course of action.

E. Removal and Return of Children

1. Officers may intervene to physically remove a child from a person who is wrongfully keeping the child away from the lawful custodian, only when one of the following three conditions exists:
 - a. The officer has a reasonable belief that the child is or will be endangered in their present surroundings, or;
 - b. The child was taken or enticed away from the lawful custodian originally, and the officer has a reasonable belief that the person will attempt to conceal the child from the lawful custodian or remove the child from the jurisdiction of the court if immediate action is not taken, or;
 - c. The officer has conferred with the legal advisor or County Attorney's Office and has been advised to take such action.

F. Disputes Involving Visitation Rights

1. The department will not enforce a non-custodial parent's visitation rights, and such complainants should be referred to their attorney.
2. If a parent having court-ordered visitation is refusing to return a child to the custody of the parent who has lawful custody, officers may not intervene to take custody unless the child is or will be endangered in their present surroundings.

G. Reports

1. Sufficient reports should be completed to document all child custody violation investigations, including at the minimum an Incident Report.